

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEELCASE INC.,)	
)	
Plaintiff,)	Case No. 1:04-cv-26
)	
v.)	Honorable Robert Holmes Bell
)	
HARBIN'S, INC., et al.,)	
)	
Defendants.)	
)	

ORDER DENYING MOTION TO STRIKE

Plaintiff has filed a motion to strike affirmative defense no. 5 (fraud) asserted by defendant Michael G. Harbin in his answer to plaintiff's amended complaint. At a hearing conducted on May 17, 2005, the court concluded that the filing of the amended complaint allowed defendants to assert whatever defenses they may have to the claims asserted therein, and that defendants had not irrevocably waived a fraud defense by failure to raise it in their initial answer. The court further determined that prejudice to plaintiff could be eliminated by allowing plaintiff to take telephone depositions of the three witnesses relevant to the fraud defense. Accordingly, for the reasons set forth more fully on the record:

IT IS ORDERED that plaintiff's motion to strike affirmative defense no. 5 (docket # 110) be and hereby is DENIED.

IT IS FURTHER ORDERED that the parties are granted leave to take telephone depositions of Michael G. Harbin and up to two other witnesses, limited to the defense of fraud in the inducement.

DONE AND ORDERED this 17th day of May, 2005.

/s/ Joseph G. Scoville
United States Magistrate Judge